BEFORE THE

OIL & GAS COMMISSION

CITY OF NORTH ROYALTON, Appellant, -vs- DIVISION OF OIL & GAS RESOURCES MANAGEMENT, Appellee, and CUTTER OIL COMPANY, Intervenor.	:	Appeal No. 856 Review of Chief's Order 2013-181; Mandatory Pooling (Callas #8HD Well; Cutter Oil Company) **FINDINGS, CONCLUSIONS & ORDER OF THE COMMISSION**

Appearances: Thomas A. Kelly, Counsel for Appellant City of North Royalton; Daniel Martin, Brian Ball, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management; Robert Karl, Counsel for Intervenor Cutter Oil Company.

Date Issued: December 13, 2014

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by the City of North Royalton, Ohio ["North Royalton" or "the City"] from Chief's Order 2013-181. Through Order 2013-181, the Chief of the Division of Oil & Gas Resources Management [the "Division"] **approved** an application for mandatory pooling, associated with a well to be known as the Callas #8HD Well. Approximately two acres of unleased municipal streets are proposed to be mandatorily-pooled into the Callas #8HD drilling unit. Cutter Oil Company ["Cutter Oil"] is the applicant for mandatory pooling. Cutter Oil intends to permit, drill and operate the Callas #8HD Well. Upon motion, the Commission **granted** Cutter Oil intervenor status, and Cutter Oil has fully participated in this matter. Cutter Oil's position in this appeal is adverse to North Royalton's position, and is aligned with the Division's position.

North Royalton filed its appeal from Chief's Order 2013-181 on January 9, 2014. Accompanying North Royalton's notice of appeal was a Motion to Stay or Suspend, wherein North Royalton asked the Commission to stay the execution of Chief's Order 2013-181 during the pendency of this appeal. On March 11, 2014, the Commission **granted** the requested stay.[1]

On April 10, 2014, this cause came on for hearing before three members of the Oil & Gas Commission. At hearing, the parties presented evidence and examined witnesses appearing for and against them. Following the hearing, the parties filed written closing arguments.

ISSUE

The issue presented by this appeal is: **Whether the Chief acted lawfully and reasonably in approving Cutter Oil Company's application for mandatory pooling for the well to be known as the Callas #8HD Well.**

THE LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief if the Commission finds that the order appealed is lawful and reasonable.

2. O.R.C. §1509.24 provides *inter alia*:

> (A) The chief of the division of oil and gas resources management ... may adopt, amend, or rescind rules relative to minimum acreage requirements for drilling units and minimum distances from which a new well may be drilled ... from boundaries of tracts, drilling units, and other wells for the purpose of conserving oil and gas reserves. The rules relative to minimum acreage requirements for drilling units shall require a drilling unit to be compact and composed of contiguous lands.

[1] On July 2, 2014, Intervenor Cutter Oil filed a Motion to Lift the Stay. The Commission is issuing this decision upon the merits, thus rendering Intervenor's Motion to Lift the Stay moot.

3. O.A.C. §1501:9-1-04 addresses the spacing of wells and provides:

(A) General spacing rules:

(1) The division of oil and gas resources management shall not issue a permit for the drilling of a new well . . . unless the proposed well location and spacing substantially conform to the requirements of this rule.

* * *

(4) A permit shall not be issued unless the proposed well satisfies the acreage requirements for the greatest depth anticipated. ...

* * *

(C) Location of wells:

* * *

(3) No permit shall be issued to drill . . . a well for the production of the oil or gas from pools from two thousand to four thousand feet unless the proposed well is located:

(a) Upon a tract or drilling unit containing not less than twenty (20) acres;

(b) Not less than six [ ] hundred [(600)] feet from any well drilling to, producing from, or capable of producing from the same pool;

(c) Not less than three hundred (300) feet from any boundary of the subject tract or drilling unit.

* * *

(5) For new applications to drill wells in urbanized areas, the proposed wellhead location shall be no closer than seventy five (75) feet to any property not within the subject tract or drilling unit. . . .

4. O.R.C. §1509.27 provides *inter alia*:

> If a **tract of land is of insufficient size or shape to meet the requirements for drilling a well thereon** as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, and the owner of the tract who also is the owner of the mineral interest has been **unable to form a drilling unit under agreement as provided in section 1509.26 of the Revised Code[2], on a just and equitable basis**, the owner of such tract may make application to the division of oil and gas resources management for a mandatory pooling order.
>
> The application shall include information as shall be reasonably required by the chief of the division of oil and gas resources management and shall be accompanied by an application for a permit as required by section 1509.05 of the Revised Code. The chief shall notify all owners of land within the area proposed to be included within the drilling unit of the filing of the application and of their right to a hearing. After the hearing or after the expiration of thirty days from the date notice of application was mailed to such owners, the chief, if **satisfied that the application is proper in form and that mandatory pooling is necessary to protect correlative rights and to provide effective development, use, and conservation of oil and gas**, shall issue a drilling permit and a mandatory pooling order complying with the requirements for drilling a well as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable . . .

(Emphasis added.)

FINDINGS OF FACT

1. Cutter Oil Company has applied for a permit to drill an oil & gas well in the City of North Royalton , Cuyahoga County, Ohio. The well would be known as the Callas #8HD Well. The Callas #8HD Well is proposed to be drilled in an urbanized area, within the City of North Royalton, Ohio.

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[2] O.R.C. §1509.26 provides in part:

> The owners of adjoining tracts may agree to pool the tracts to form a drilling unit that conforms to the minimum acreage and distance requirements of the division of oil and gas resources management under section 1509.24 or 1509.25 of the Revised Code.

2. The Callas #8HD Well is proposed to be drilled directionally from the surface to a depth of 4,000 feet, and would then run horizontally for 591 feet. The well would produce from the Clinton Sandstone Formation.

3. Based upon the proposed depth of the Callas #8HD Well, Cutter Oil attempted to assemble a drilling unit of at least 20 acres, including all properties within 300 feet of the proposed well.[3]

4. Portions of two North Royalton City streets are located within 300 feet of the proposed Callas #8HD Well, and are proposed to be mandatorily-pooled into the Callas #8HD's drilling unit. These streets are Saturn Drive and Athena Drive.

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[3] A "drilling unit" is defined at O.R.C. §1509.01(G) as "the minimum acreage on which one well may be drilled, ..."

Pursuant to O.A.C. §1501:9-1-04(C)(3), a well proposed to be drilled for the production of the oil or gas from pools at depths **from 2,000 to 4,000 feet** must be sited upon a drilling unit containing at least 20 acres. Such drilling unit must also include the oil & gas rights associated with all properties located within a 300-foot radius of the proposed well. (Division Geologist Steve Opritza testified that the inclusion of properties within a 300-foot radius applies along the entire length of the horizontal portion of the well, *i.e.* from the well's entry point into the formation to be produced to the "target," or end, of the well.)

Pursuant to O.A.C. §1501:9-1-04(C)(4), a well proposed to be drilled for the production of the oil or gas from pools at depths **from 4,000 feet or deeper** must be sited on a drilling unit encompassing at least 40 acres, and including the oil & gas rights associated with all properties located within a 500-foot radius of the proposed well.

In this matter, the application for the Callas #8HD Well *(see Appellant's Exhibit D, Joint Stipulated Exhibit C and Division's Exhibit 6)*, and the drilling permit issued by the Chief *(see Division's Exhibit 5)*, indicate that this well will have a total depth of 4,000 feet. Curiously, the mandatory pooling order issued by the Chief sets forth a total depth of 3,999 feet *(see Appellant's Exhibit A)*. While there is only a one foot difference between 3,999 feet and 4,000 feet, this single foot is of critical importance, as it marks the line between a required 20-acre drilling unit versus a 40-acre drilling unit. Considering that the drilling application and the drilling permit reflect a total depth of 4,000, a question arises as to whether the correct spacing requirements have been applied.

As initially filed, the application for the Callas #8HD Well proposed to produce from the Ohio Shale/Queenston Formations. The application was later amended to limit the formation to be produced to the Clinton Sandstone (a formation included within the geologic interval containing the Ohio Shale and the Queenston Formations). The proposed total depth of the well was not changed in response to the amendment limiting production to the Clinton Sandstone.

O.A.C. §1501:9-1-04(A)(3) provides:

> Upon receipt of an application by the division, the chief shall determine if the proposed total depth is reasonable to penetrate the objective geological formation or geological zone. If the chief determines that the proposed total depth is insufficient to penetrate the proposed geological formation or zone and that, because of the insufficient proposed total depth, the spacing and acreage requirements as per paragraph (C) of this rule are not fulfilled the permit shall be denied. In any event, no well shall be drilled deeper than the proposed total depth without prior permission from the chief.

Despite the depth set forth in the approved permit, and in accordance with O.A.C. §1501:9-1-04(A)(3), the Commission assumes that the Chief has determined that the Callas #8HD Well will produce from a pool at a depth shallower than 4,000 feet. Therefore, for purposes of this decision the Commission will further assume that the spacing requirements for a well shallower than 4,000 feet apply (*i.e.*, the Commission will utilize the spacing requirements articulated under O.A.C. §1501:9-1-04(C)(3), as applied by the Chief).

5. This area of North Royalton was subdivided in 1965. *(See Joint Stipulated Exhibit J.)* It appears that Athena Drive was dedicated to the City for public use on July 26, 1966. *(See Joint Stipulated Exhibit G.)* It further appears that Saturn Drive was dedicated to the City for public use on October 24, 1973. *(See Joint Stipulated Exhibit H.)* [4]

6. Cutter Oil first approached the City of North Royalton in 2007 regarding the leasing of City properties for the purpose of oil & gas development. Thereafter, the City passed Ordinance 08-134, addressing issues of safety, notification, insurance and landscaping relative to oil & gas development on City properties. Between 2008 and 2013, Cutter Oil approached the City for oil & gas leases on several occasions, with most proposed leases being executed.[5]

7. Witnesses for the City and for Cutter Oil testified that, initially, there was a good working relationship between the City and Cutter Oil. When leasing from the City, Cutter Oil utilized a lease agreement, developed with input from the City, and differing in some respects from Cutter Oil's "standard lease."[6] At some point, early in the relationship between the City and Cutter Oil, Mr. C.J. Cutter (on behalf of Cutter Oil) assured the City that Cutter Oil would never utilize the mandatory pooling provisions of O.R.C. §1509.27 in its attempts to lease City properties.

8. Cutter Oil operates approximately seventeen oil & gas wells in North Royalton, Ohio. There are at least six previously-drilled Cutter wells located within 5,000 feet of the proposed Callas #8HD Well. Six additional, non-Cutter, wells are also sited within 5,000 feet of the proposed Callas #8HD Well. *(See Division's Exhibit 5, p. 14.)*

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[4] Both Joint Stipulated Exhibits G and H discuss the dedication of streets for public use. Both stipulated exhibits refer to the dedication of areas "highlighted" upon a plat. The exhibits presented to the Commission were in black and white, with no apparent highlighting. Thus, the Commission must assume that the streets discussed as dedicated within these documents were the streets actually highlighted upon the original plats (*i.e.*, were Athena Drive and Saturn Drive, respectively).

[5] Based upon Intervenor's Exhibits F through T, it appears that, between 2008 and 2013, Cutter Oil approached the City for oil & gas leases on at least fifteen occasions, involving fifteen separate leases. These exhibits also appear to indicate that twelve of these requested leases were approved, and executed, by the City.

[6] Lease agreements between the City and Cutter Oil provided for a 15% royalty interest, and provided a signing bonus, or "spud fee." Cutter's standard non-development lease provides for a 12.5% royalty interest, and offers no spud fee.

9. There are 15 homes located within 500 feet of the proposed Callas #8HD Well.[7] *(See Division's Exhibit 5, p. 15.)*

10. The proposed Callas #8HD Well would be the first horizontal well drilled in North Royalton, and would be the first horizontal well drilled or operated by Cutter Oil in any location.

11. Since 2008 (when the first Cutter Oil well was drilled in this area), there have been three reported incidents involving Cutter wells, which have presented safety concerns to the City government. These past safety incidents were not considered by the Division in its review of the mandatory pooling application for the Callas #8HD Well. However, these past safety incidents were considered by the City government in its evaluation of the leasing agreement proposed by Cutter Oil for the Callas #8HD Well.[8]

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[7] However, during the on-site inspection conducted by the Division in accordance with O.R.C. §1509.06(H)(1), the Division determined that 8 homes and 9 garages/out buildings are located within 500 feet of the proposed Callas #8HD wellhead. *(See Division's Exhibit 4, p. 4.)*

[8] The Commission received evidence relating to these three incidents:

> (1) in 2008, a steel rod, with approximate dimensions of ½ inch (diameter) by 700 feet (length), was ejected from Cutter's Valley Vista #1 Well, under pressure, and in the immediate vicinity of an elementary school, with an attendant oil spray that required containment;
>
> (2) in August 2011, there was a leak from a section of a production line associated with Cutter's Callas #2 Well, resulting in oil entering a municipal storm sewer leading to Chippewa Creek; and
>
> (3) in March 2012, there was a release of natural gas from Cutter's Callas #1 Well, where a pop-off value (a safety device intended to address excess pressure) on the compressor stationed on a natural gas sales line was activated due to high pressure in the Dominion Gas line, and which incident resulted in the evacuation of several residences for a period of time.

All of these issues were addressed, and resolved, by Cutter Oil to the satisfaction of the Division. No enforcement actions were issued by the Division in regards to these incidents. The Division did not consider these incidents in its evaluation of Cutter Oil's mandatory pooling application.

12. In 2011, Cutter Oil began assembling a drilling unit for what would be known as the Callas #8HD Well. During this time, Cutter Oil entered into voluntary leases with 46 landowners, whose properties are now committed to the Callas #8HD Well.[9]

13. In May – June 2011, Cutter Oil attempted to enter into voluntary leases for the Donley and the Grothe properties, as part of the Callas #8HD drilling unit. The Donleys and Grothes did not voluntarily lease their properties.

14. In February 2012, Cutter Oil approached surveyor Edward Gasbarre to construct a plat of the proposed Cutter #8HD drilling unit. At this point, the Donley and Grothe properties were identified as unleased, and it was Cutter Oil's expectation that these two properties would require mandatory pooling into the Callas #8HD drilling unit.

15. One year later, on February 14, 2013, Cutter Oil approached the City regarding the leasing of City streets for inclusion in the Callas #8HD drilling unit. On February 14, 2013, counsel for Cutter Oil provided a plat of the proposed Callas #8HD drilling unit to the City.

16. On February 18, 2013, Cutter Oil submitted to the City a proposed lease of City streets for the development of the Callas #8HD Well. This proposed lease was placed upon the North Royalton Utilities Committee's February 19, 2013 meeting agenda. At the committee's February 19, 2013 meeting, the Cutter lease was determined to be incomplete. *(See Intervenor's Exhibit III.)* The acreage of City streets included under this initial lease was 7.604 acres.

[9] At hearing, City officials testified that there has been a shift in local attitude towards oil & gas development within the City of North Royalton. It was suggested that some landowners, who had signed leases with Cutter Oil, now regret their decisions and do not wish to be part of the Callas #8HD drilling unit. However, the Commission did not hear testimony directly from any such landowners. Significantly, once a landowner has signed an oil & gas lease, he has committed his property to a proposed well. A "change of heart" does not alter the fact that a lease has been executed. Cutter Oil is entitled to rely upon properly-executed leases in developing its wells.

17. On March 17, 2013, Cutter Oil submitted its first amended lease for the Callas #8HD drilling unit to the City. This lease covered 1.938 acres of City streets, including portions of Saturn and Athena Drives. *(See Intervenor's Exhibit V.)* This first amended lease also included a provision for secondary oil recovery. At the time of submitting this lease, Cutter Oil indicated that it would seek mandatory pooling if the proposed lease were not accepted by the City. The City considered this first amended lease to be a major departure from the lease initially proposed a month earlier on February 18, 2013, as this amended lease was for less acreage and included secondary oil recovery (an activity with which the City was unfamiliar, and which had not been an element of any previous Cutter leases with the City).

18. On March 19, 2013, the City's Utilities Committee met with C.J. Cutter and Division Inspector Tom Hill, seeking information regarding secondary oil recovery. Following this meeting, Mr. Cutter agreed to remove the secondary oil recovery provision from Cutter Oil's proposed lease of City streets for the Callas #8HD Well.

19. On March 25, 2013, Cutter Oil submitted a "complete" lease for 1.956 acres to the City. This second amended lease removed the secondary oil recovery provision from the March 17, 2013 lease. On April 1, 2013, additional revisions were submitted by Cutter Oil.

20. On April 2, 2013, North Royalton City Council met and conducted its first reading of the proposed Cutter Oil lease of City streets for the Callas #8HD Well.[10]

21. In March and April of 2013, at least three separate leases, with separate acreage amounts (*i.e.*, for 7.604 acres, 1.938 acres and 1.956 acres) were presented by Cutter Oil to North Royalton's City government.

22. On April 5, 2013, Cutter Oil submitted to the Division: (1) an application for mandatory pooling, and (2) a drilling application, both addressing the Callas #8HD Well.

[10] O.R.C. §731.17 addresses the passage of ordinances and resolutions by municipal corporations and requires three separate readings of ordinances or resolutions, which readings are to be accomplished on different days (although the statute does provide procedures for dispensing with the requirement of multiple readings).

23. By April 5, 2013, the City's legislation pertaining to the proposed lease had had its first reading before the City Council; however, the City had not yet conducted the required public meeting under O.R.C. §1509.61 regarding the proposed City lease for the Callas #8HD Well.[11]

24. The drilling application filed by Cutter Oil with the Division on April 5, 2013 was submitted on a Division-generated form, as a sworn affidavit of Elizabeth Cutter (President of Cutter Oil Company).

25. The drilling application submitted by Cutter Oil on April 5, 2013 proposed a drilling unit for the Callas #8HD Well of 25.450 acres.[12]

26. The mandatory pooling application filed by Cutter Oil with the Division on April 5, 2013 asked to pool 1.956 acres of City streets, including portions of Saturn, Athena and Jupiter Drives.[13] *(See Division Exhibit 7, p. 2 and pp. 26-29.)*

27. On April 16, 2013, North Royalton Utilities Committee met and conducted the second reading of the proposed Callas #8HD Well lease. At this meeting, it appears that the City had before it two versions of the lease for consideration (one for 7.604 acres and one for 1.956 acres). Minutes from the Utilities Committee meeting reflect general opposition, by those present, to the proposed Callas #8HD lease. *(See Division's Exhibit 11.)*

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[11] O.R.C. §1509.61 became effective on July 30, 2010. This statute provides for certain public notice and meeting requirements where land located within an urbanized area, and owned by a political subdivision, is proposed to be leased for oil & gas development. Basically, the statute requires that two public meetings be conducted in such circumstances (one meeting to "introduce" the proposed lease agreement, and a second meeting to allow for voting upon the proposed lease agreement).

[12] The size of the drilling unit was later revised to 23.826 acres and, eventually, to 23.8848 acres. Division Geologist Steve Opritza testified that the primary reason for this reduction in drilling unit acreage resulted from the removal of some properties, located on the north side of Jupiter Drive, from the drilling unit. The removal of the Jupiter Drive properties would have also involved the reduction of some amount of City streets proposed for the drilling unit (*i.e.*, the portions of the city streets utilized as "connectors" to the Jupiter Drive properties).

[13] The mandatory pooling order, as ultimately issued, ordered the pooling of only 1.928 acres of City property, and included only portions of Saturn and Athena Drives.

28. On April 18, 2013, C.J. Cutter was contacted by Division Geologist Steve Opritza regarding issues, or inconsistencies, with regards to Cutter Oil's drilling application for the Callas #8HD Well. After discussion, C.J. Cutter authorized Mr. Opritza to revise Cutter Oil's drilling application for the Callas #8HD Well. On April 18, 2013, Division Geologist Steve Opritza revised Cutter Oil's drilling application for the Callas #8HD Well, changing the geologic production zone and reducing the drilling unit acreage.[14]

29. On April 18, 2013, the City received a revised plat from Cutter Oil for the proposed Callas #8HD Well.

30. On April 19, 2013, upon recommendation of Division Geologist Steve Opritza, Cutter Oil approached landowners Donley and Grothe (whose properties were proposed to be mandatorily-pooled into the Callas #8HD drilling unit) and extended to these landowners a more generous offer for the leasing of their properties (*i.e.*, 15% royalty interest and a signing bonus – the offer that Cutter Oil had extended to North Royalton for the City streets). These landowners remained unwilling to voluntarily lease their properties to Cutter Oil. *(See Division's Exhibit 7, pp. 11-12 and 19-20.)*

31. On May 7, 2013, the official version of Cutter's proposed lease of City streets under consideration by the City was amended to encompass 7.604 acres. *(See Appellant's Exhibit T, pp. 7 and 10.)*

[14] Mr. Opritza revised the Callas #8HD application on April 18, 2013, reducing the drilling unit acreage. Inexplicably, two versions of the altered application were entered into evidence. Both exhibits indicate a change to the application made by Mr. Opritza on April 18, 2013. However, these two exhibits show different amended acreages *(see Division's Exhibit 5, p. 11, showing 23.8848 acres and Appellant's Exhibit D, p. 1, showing 23.826 acres)*. This discrepancy was not explained at hearing.

32. On May 14, 2013, Cutter Oil's mandatory pooling application for the Callas #8HD Well came on for hearing before the Technical Advisory Council on Oil & Gas [the "TAC"].[15] Representatives of North Royalton and Cutter Oil appeared at the TAC hearing. At this hearing, North Royalton explained that it had not been given adequate time to allow for the notice and meeting requirements of O.R.C. §1509.61. *(See footnote 11.)* On May 14, 2013, the TAC "tabled" Cutter Oil's mandatory pooling application, allowing the City to proceed with the notice and meeting requirements of O.R.C. §1509.61.

33. On May 14, 2013, the North Royalton City Council conducted a public meeting to consider the Callas #8HD lease. The version of the lease under consideration on May 14, 2013 covered 7.604 acres of City streets. The City received comments opposing the leasing of City property for the Callas #8HD Well. *(See Division's Exhibit 8.)*

34. On May 21, 2013, the North Royalton City Council conducted a third reading of the Callas #8HD Well lease. This version of the lease covered 7.604 acres of City streets. A vote was taken, and the proposed lease agreement was defeated unanimously.

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[15] The TAC is created pursuant to O.R.C. §1509.38. The TAC is a multi-interest board, whose membership must include persons with "at least five years of practical or technical experience in oil or gas drilling and production." Thus, members of the TAC possess technical knowledge and expertise relative to the oil & gas industry. The TAC advises the Division Chief on technical matters.

In accordance with O.R.C. §1509.27, the Chief is required to conduct a hearing upon an application for mandatory pooling. In this case, under authority granted by O.R.C. §1509.38, this task was delegated by the Division Chief to the TAC. However, representatives of the Chief also attended and participated in the TAC hearing.

The applicant for a pooling order may appear before the TAC and present information in support of its application. Owners of land within the drilling unit receive notice of the TAC hearing. Such landowners may appear before the TAC and may present information, including objections, relative to the mandatory pooling application.

The TAC hearing is not governed by the formal administrative hearing procedures of R.C. Chapter 119. Following the hearing, the TAC makes a recommendation to the Division Chief regarding the application for mandatory pooling. This recommendation is orally announced by the TAC through a vote taken at the conclusion of a hearing. No written recommendation is issued by the TAC. There is no statutory requirement that the Chief follow the recommendation of the TAC.

35. On November 12, 2013, the Callas #8HD Well mandatory pooling application again came on for hearing before the TAC. Both North Royalton and Cutter Oil appeared and participated in the TAC hearing. The TAC unanimously recommended approval of Cutter Oil's mandatory pooling application for the Callas #8HD Well, thus supporting the inclusion of unleased properties owned by the Donleys, the Grothes and the City of North Royalton into the Callas #8HD drilling unit. The TAC's recommendation, and a summary of the TAC proceedings, were communicated to the Division Chief by Division Geology Program Manager Steve Opritza.

36. On December 10, 2013, the Division Chief issued Chief's Order 2013-181 (the mandatory pooling order), approving Cutter Oil's application for mandatory pooling associated with the proposed Callas #8HD Well. The Chief's Order stated in pertinent part:

> (4) Cutter Oil has requested authorization to horizontally drill the Callas #8HD well to the Clinton formation to a proposed total depth of 3,999 feet. [16]
>
> (5) Cutter Oil is the "owner," as that term is defined in R.C. 1509.01(K) of 21.88 acres in the 23.8848 acre unit, obtained through voluntary lease agreements.
>
> (6) According to the application, Cutter Oil has been unable to secure a voluntary lease agreement on a just and equitable basis with the following landowners: City of North Royalton, 1.928 acres; Irene Grothe, .39 acre; and Leslie Donley, .39 acre.[17] The affidavit submitted by Cutter Oil with its application for mandatory pooling shows that Cutter Oil provided information on its attempts to reach a voluntary lease agreement on a just and equitable basis with the City of North Royalton, Irene Grothe, and Leslie Donley, and all such attempts were unsuccessful.

(See Appellant's Exhibit A.)

[16] But see footnote 3.

[17] The total acreage proposed to be mandatorily pooled was 2.708. The order also states that Cutter Oil had obtained voluntary lease agreements covering 21.88 acres of the 23.8848-acre unit. 21.88 acres and 2.708 acres do not add up to 23.8848 acres. This discrepancy was not explained at hearing.

37. On December 10, 2013, the Division also issued a drilling permit for the Callas #8HD Well to Cutter Oil. *(See Division's Exhibit 5.)*

38. On January 9, 2014, the City of North Royalton filed a notice of appeal from the issuance of Chief's Order 2013-181 with the Oil & Gas Commission.

DISCUSSION

Ohio's oil & gas law is designed to protect both the public's interest in the conservation and efficient development of oil & gas resources, and the private property interests of those, like the Appellant, who own land, which overlies deposits of oil & gas.

The law requires that wells be drilled on land meeting certain set-back, acreage and spacing requirements. *See O.R.C. §1509.24.* The Callas #8HD Well is proposed to be drilled directionally (at an angle) to a depth of 4,000 feet, at which point the well would continue horizontally for 591 feet. For a well with a proposed depth from 2,000 feet to 4,000 feet, O.R.C. §1509.24 and O.A.C. §1501:9-1-04 require a 20-acre drilling unit, and require that the drilling unit include the oil & gas rights for all properties located within a 300-foot radius of the proposed well's target.[18] The "target area" for a horizontal well is the entire horizontal length of the well.

If an adequately-sized drilling unit cannot be established through the voluntary participation of landowner-lessors, a permit applicant may seek to mandatorily pool some non-leased lands into the drilling unit. *See O.R.C. §1509.27.* Mandatory pooling is designed to allow for mineral development on a drilling unit, which is of insufficient size and/or shape to meet the requirements of the state's spacing laws.

[18] But see footnote 3, regarding the proposed depth of the Callas #8HD Well.

Mandatory pooling prevents a minority landowner, whose acreage is small but necessary to form a legal drilling unit, from disrupting the majority landowners' ability to develop their properties. It is designed not only to protect the voluntary lessors' correlative rights, but also to protect the correlative rights of the landowner whose property is mandatorily pooled.[19] Under O.R.C. §1509.27, the landowner whose property is mandatorily pooled will receive royalties, proportionate to the acreage subject to pooling, and may elect to hold a working interest in the proposed well.[20]

O.R.C. §1509.27 addresses the procedures to be employed where mandatory pooling is sought, and allows for the inclusion of unleased properties into a drilling unit if two conditions are met: (1) the drilling unit must be of insufficient size or shape without the pooling of unleased property, and (2) the applicant must demonstrate that it has been unable to enter into a voluntary pooling agreement with the unleased landowner on a just and equitable basis. If these two conditions are met, the Division Chief will then consider: (3) whether the mandatory pooling application is proper in form, and (4) whether mandatory pooling is necessary to protect correlative rights and to provide effective development, use, and conservation of oil & gas. *See O.R.C. §1509.27.*

In this case, Cutter Oil assembled a drilling unit combining the properties of 49 landowners. Forty-six of these landowners voluntarily leased their oil & gas rights to Cutter Oil. Three necessary landowners did not enter into voluntary leases: the Donleys, the Grothes, and the City of North Royalton. Chief's Order 2013-181 (the mandatory pooling order) required the inclusion of these three recalcitrant landowners into the drilling unit. Only the City appealed Chief's Order 2013-181, asserting the order to be unlawful and/or unreasonable.

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[19] "Correlative rights" is defined at O.R.C. §1509.01(I) as the "reasonable opportunity to every person entitled thereto to recover and receive the oil and gas in and under the person's tract or tracts, or the equivalent thereof, without having to drill unnecessary wells or incur other unnecessary expense."

[20] A "working interest" would allow a landowner to participate in the profits of a successful well, subject to the payment of a share of all costs and expenses associated with the drilling and production of the well.

In its appeal, the City identified five areas of concern: (1) whether the Callas #8HD drilling unit is "compact," (2) whether City streets qualify as "tracts" of land, subject to mandatory pooling, (3) whether Cutter Oil's application is "proper in form," given that alterations were made to the affidavit that constitutes the drilling application for the Callas #8HD Well, (4) whether Cutter Oil's negotiations for a voluntary City lease were just and equitable, and (5) whether the Chief should have considered safety issues in his evaluation of Cutter Oil's mandatory pooling application.

Through pre-hearing motions, the Commission reduced the issues under consideration to the following: (1) compactness of the drilling unit, (2) whether City streets qualify as tracts of land, subject to mandatory pooling, (3) whether Cutter Oil's mandatory pooling application was proper in form, and (4) whether negotiations between Cutter Oil and the City were just and equitable, which may consider the historical relationship between these parties, including incidents relative to safety.

Whether The Callas #8HD Drilling Unit Is "Compact"

In addition to meeting the set-back, acreage and spacing requirements, all drilling units must be "compact," and "composed of lands that are contiguous." *See O.R.C. §1509.24.* The terms "compact" and "contiguous" are not defined by statute or regulation.[21] In this matter (with the inclusion of the mandatorily-pooled properties), all properties within the Callas #8HD drilling unit are "connected," and the parties appear to agree that the unit is composed of "contiguous" properties.

Without a statutory definition of "compact," or any current policy or standard addressing this concept, the Division (in its written closing arguments) directed the Commission to a dictionary definition of this term: "occupying a small volume by reason of efficient use of space."[22]

[21] Mr. Opritza did testify that the Division is in the process of developing a regulatory definition of the term "compact."

[22] The Division directed the Commission to a definition of "compact" as found at www.merriam-webster.com (June 21, 2012).

Other dictionary definitions of "compact" more strongly emphasize the "closeness" suggested by this term. For example, Webster's Online Dictionary includes within the definition of compact: (1) "closely and firmly united or packed together," (2) "a close union of parts," and (3) "having a solid form."

The Callas #8HD drilling unit is basically rectangular in shape and does not include any "outlying properties."[23] *(See Attachment A, colorized plat.)*

A question was raised as to whether the pooled portions of Saturn Drive and Athena Drive should have been extended and "squared off." It appears that Cutter chose to pool the minimum amount of City streets necessary to this drilling unit (*i.e.*, to include only those portions of City streets located within 300 feet of the well). The "squaring off" of the City properties may have slightly enhanced the compactness of the drilling unit. However, this "squaring off" is perhaps more relevant to a consideration of whether the drilling unit adequately protects the City's correlative rights. *See Nils Johnson v. Division, #370, (November 30, 1990) pp. 4-5, affirmed by 10th District Court of Appeal, 89 Ohio App.3d 623 (July 27, 1993), pp.626-629.* The Commission **FINDS** that the Callas #8HD drilling unit is sufficiently "compact."

[23] Mr. Opritza testified that the initial plat for the Callas #8HD drilling unit included a few properties on the north side of Jupiter Drive, which Cutter Oil proposed to "connect" to the main body of the drilling unit via "narrow, connector" sections of City streets. Mr. Opritza determined that these "outlying" properties were not necessary to the unit, and detracted from the unit's "compactness." Mr. Opritza required Cutter to remove these "outlying" properties from the Callas #8HD drilling unit.

Whether City Streets Are "Tracts" Of Land, Subject To Mandatory Pooling

In setting forth the procedure for addressing mandatory pooling, O.R.C. §1509.27 utilizes the term "tract" in, seemingly, inconsistent contexts. For example, in the introductory paragraph of O.R.C. §1509.27, the term "tract" appears to refer to the combined acreage proposed for a drilling unit.[24] While in O.R.C. §1509.27(D), the term "tract" appears to refer to an individual parcel pooled within a unit.[25]

The term "tract" is separately defined by statute, at O.R.C. §1509.01(J), as:

> "Tract" means a single, individually taxed parcel of land appearing on the tax list.

This definition of "tract" has existed in Chapter 1509 for many years. Interestingly, the first appeal heard by the Oil & Gas Commission (then called the Oil & Gas Board of Review), the *Jerry Moore* appeal, contained a brief discussion of the term "tract," which may be of interest to the parties to the immediate appeal:

> The meaning of the word "tract" as used in the oil and gas conservation statute has already been the subject of much discussion, and may well continue to be. Although Section 1509.01(J), Ohio Revised Code, states that tract means "a single, individually taxed parcel of land appearing on the tax list," and it would appear that such definition is applicable in Section 1509.01 to 1509.99, Ohio Revised Code, inclusive, an examination of said sections discloses that the word "tract" is

[24] O.R.C. §1509.27 begins:

> If a tract of land is of insufficient size or shape to meet the requirements for drilling a well thereon as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, and the owner of the tract who also is the owner of the mineral interest has been unable to form a drilling unit under agreement as provided in section 1509.26 of the Revised Code, on a just and equitable basis, such an owner may make application to the division of oil and gas resources management for a mandatory pooling order.

[25] O.R.C. §1509.27(D) provides that a mandatory pooling order shall:

> Allocate on a surface acreage basis a pro rata portion of the production to the owner of each tract pooled by the order .....

> used therein at least thirty-nine times and that in several instances where used a narrow construction of the language, "a single, individually taxed parcel of land appearing on the tax list" would be entirely unworkable, e.g., Section 1509.28, Ohio Revised Code. It is recognized that the word "tract" is an often used word in the oil and gas exploration industry. The facts that such term is commonly used in the oil and gas industry and that it has several meanings can be noted from the lengthy transcript in this appeal where such word appears at least one hundred twenty-four times, a number of which usages, particularly by the State, would not fit a narrow construction of the language used in Section 1509.01(J).

See Jerry Moore vs. Division, #1 (July 1,1966), at p. 17 (the Jerry Moore appeal addressed issues of mandatory pooling pursuant to O.R.C. §1509.27).

Testimony of Division witness Steve Opritza revealed that public roads have been mandatorily pooled into drilling units in the past. And, this Commission has heard appeals involving the mandatory pooling of municipal properties and public roads. *See Village of Hartville vs. Division & Excalibur Exploration, Inc. , #773 (January 2, 2007); Municipality of Sebring vs. Division & Ohio Valley Energy Systems, #839 (August 6, 2012); affirmed by Franklin County Court of Common Pleas, case #12CV11155 (January 29, 2013).*

Indeed, Chapter 1509 appears to anticipate that public roads may be subject to mandatory pooling.[26]

The evidence sufficiently established that Saturn Drive and Athena Drive were historically dedicated to the City for public use. *(See Finding of Fact No. 5.)* As regards dedicated roadways, O.R.C. §711.07 provides:

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[26] For example, O.R.C. §1509.021(M) provides:

> The surface location of a new well or a new tank battery of a well shall not be within fifty feet of a railroad track or of the traveled portion of a public street, road, or highway. **This division applies regardless of whether the public street, road, or highway has become part of the drilling unit of the well pursuant to a mandatory pooling order issued under section 1509.27 of the Revised Code.**

(Emphasis added.)

> Upon recording, as required by section 711.06 of the Revised Code, the plat shall thereupon be a sufficient conveyance to vest in the municipal corporation the fee of the parcel of land designated or intended for streets, alleys, ways, commons, or other public uses, to be held in the corporate name in trust to and for the uses and purposes set forth in the instrument.

Thus, the recordation of a plat vests in a municipality a "fee interest" in the public roadway. The plats associated with Saturn and Athena Drives did not articulate any limitations upon oil & gas rights, or upon the development of such resources, in association with these public roads. The Commission **FINDS** that the City streets at issue were properly subject to the mandatory pooling provisions of O.R.C. §1509.27.

Whether Cutter Oil's Mandatory Pooling Application Is Proper In Form, Given That Alterations Were Made To The Affidavit That Constitutes The Drilling Application For The Callas #8HD Well

O.R.C. §1509.27 requires that an application for mandatory pooling be accompanied by an application for a drilling permit as provided for under O.R.C. §1509.05. In this case, an application for the Callas #8HD drilling permit, in the form of an affidavit of Elizabeth Cutter, President of Cutter Oil, was submitted with the application for mandatory pooling. *(See Division's Exhibit 7, p. 3.)*

An application for a drilling permit is completed on a form developed by the Division. The City raised an issue relating to revisions of Cutter's drilling application made by Division personnel, under the direction of Mr. C.J. Cutter. *(See Division's Exhibit 5, p. 11 and Appellant's Exhibit D, p. 1.)* The City viewed these changes as improper adulterations of the Elizabeth Cutter Affidavit, and argued that interlineation by persons other than Ms. Cutter renders this application flawed and improper in form.

First, it must be noted that this Commission lacks jurisdiction to review drilling permits issued under the authority of O.R.C. §1509.05 and O.R.C. §1509.06. *See O.R.C. §1509.06(F); Chesapeake Exploration, LLC v. Oil & Gas Commission, et al., 135 Ohio St.3d 204, 2013-Ohio-224.* Thus, to the extent that the City argues that alterations in the application for the Callas #8HD drilling permit were improper, and that the Division should be precluded from issuing a drilling permit for the Callas #8HD Well based upon an adulterated affidavit, the Commission's jurisdiction does not extend to this issue.

Notably, the drilling application appended to the mandatory pooling application submitted to the Commission as part of Division's Exhibit 7 does not contain interlineations by Division staff (but, also, does not accurately reflect the acreage ultimately devoted to the Callas #8HD drilling unit).

The Commission understands the City's concerns regarding changes made to the Elizabeth Cutter Affidavit.[27] However, O.A.C. § 1501:9-1-02(B)(1) allows necessary corrections to drilling applications. The Commission **FINDS** that, to the extent that the drilling application is part of the mandatory pooling application, corrections to the drilling application did not render the mandatory pooling application associated with the Callas #8HD Well improper in form.

Whether Cutter Oil Engaged In Negotiations With The City For A Voluntary Lease Agreement On A Just And Equitable Basis

To establish the right to a mandatory pooling order, an applicant must demonstrate, and the Chief must find, that attempts to form a drilling unit through voluntary agreement, on a "just and equitable basis," were unsuccessful. *See O.R.C. §1509.27.* This issue is the "crux" of the controversy presented by the immediate appeal.

[27] Regarding the affidavit format of the drilling application, Chief Simmers testified that this affidavit format (known as Form 1) has been in use at the Division for decades. Except for a requirement under O.A.C. §1501:9-1-02(A)(4) that a drilling application include an affidavit of ownership, there is no other requirement in statute or rule that the drilling application be filed in the form of an affidavit. Provisions of O.A.C. §1501:9-1-02(B)(1)(c)&(d), which allow for corrections to drilling applications, appear inconsistent with the concept that the application be submitted in the form of an affidavit. The Division may wish to reconsider the form on which applicants must apply for a drilling permit.

Where mandatory pooling is sought, the Division follows a procedure for evaluating such an application. Pursuant to O.R.C. §1509.27, an application for mandatory pooling must be accompanied by an application for a drilling permit and must "include information as shall be reasonably required" by the Chief. The submitted information is evaluated by the Division Chief, with the aid and advice of the TAC, in order to determine if mandatory pooling is appropriate. To approve mandatory pooling, the applicant must demonstrate, and the Chief must find, that (1) the drilling unit is of insufficient size or shape without the inclusion of pooled property, and that (2) the applicant has attempted to reach a voluntary lease agreement, on a just and equitable basis, with the non-participating landowner and that these efforts have been unsuccessful.

The statute does not provide a definition of a "just and equitable basis." However, this standard has been addressed by this Commission in prior cases. In fact, the very first appeal heard by the Oil & Gas Commission , discussed the nature of lease negotiations between a mandatory pooling applicant and an unleased landowner:

> ... unless the parties themselves so agree, the Chief of the Division ... shall determine, preferably after advice from the Technical Advisory Council, whether the owner-applicant has been unable to form such drilling unit under voluntary pooling agreement provided in Section 1509.26, Ohio Revised Code, and whether such owner-applicant has used **all reasonable efforts** to enter into a voluntary pooling agreement. **Using "all reasonable efforts" contemplates both a reasonable offer and sufficient efforts** to advise the other owner or owners of the same.

See Jerry Moore vs. Division, supra, at p. 19; emphasis added; see also Bass Energy, Inc. vs Division & Duck Creek Energy, Inc., #815 (January 29, 2010); Lawrence & Shalyne Fox vs. Division & Everflow Eastern, #811 (June 24, 2009).

Lacking a statutory definition of "just and equitable" negotiations, this Commission has often referred to the "all reasonable efforts" test set forth in the *Jerry Moore* decision. A determination of whether negotiations for a voluntary lease were undertaken on a "just and equitable basis" requires a case-by-case evaluation of the site specific facts surrounding a particular mandatory pooling application. In many cases the "all reasonable efforts" test is sufficient to evaluate whether an applicant has attempted to secure a voluntary lease on a "just and equitable basis." However, this test may not be sufficient in all pooling situations. In other words, the "all reasonable efforts" test may serve as a valid threshold test in evaluating lease negotiations, but may not be the end of the inquiry into the whether the "just and equitable" standard has been met.

O.R.C. §1509.27 provides an opportunity for a hearing upon an application for mandatory pooling. Pursuant to the Division Chief's delegation of authority under O.R.C. §1509.38, such hearing, in this case, was conducted by the TAC, in conjunction with Division personnel.

After holding the hearing required by O.R.C. §1509.27, the TAC determines whether, in its opinion, mandatory pooling is appropriate, and makes a recommendation to the Division Chief. This recommendation is announced at the conclusion of the hearing. The Chief is not required to follow the TAC's recommendation.

In this case, there is no dispute that the drilling unit is insufficient in size and shape without the inclusion of unleased properties owned by the Donleys, the Grothes and the City of North Royalton. However, the parties disagree on whether efforts to lease the City streets were undertaken in a just and equitable manner.

At the Commission's hearing, the City expressed concern that the Division had not independently sought input from the City or its residents in evaluating the nature of lease negotiations between the City and Cutter Oil. The City had anticipated that the TAC hearing would be the opportunity to express their concerns and to describe their version of the lease negotiation process.

Generally, an application for mandatory pooling is accompanied by affidavits from the applicant, describing the offers of lease extended to unleased landowners and reciting the attempts made by the applicant to secure voluntary leases from such unleased landowners. Such affidavits were appended to Cutter's application for mandatory pooling. *(See Division's Exhibit 7.)*

Applying the "all reasonable efforts" test discussed above to this case, the Commission acknowledges that the royalty amount and the signing bonus offered to the City were generous by both industry standards and as compared to offers extended to voluntary lessors participating in the Callas #8HD drilling unit.

It is less clear whether Cutter undertook sufficient efforts to reach a voluntary agreement with the City. The Commission believes that the "all reasonable efforts" test is a good threshold test in the evaluation of lease negotiations, but it is not necessarily the end of the inquiry into whether such negotiations were undertaken on a "just and equitable basis." Yet, it is clear that the Division limits its evaluation of lease negotiations to the question of whether a reasonable monetary offer has been extended to an unleased landowner. Indeed, testimony revealed that, in the Division's view, the "just and equitable" standard has been distilled down to **only** a consideration of the financial aspects of lease negotiations. Division Chief Rick Simmers and Division Geology Program Manager Steve Opritza candidly testified that the Division's evaluation of "just and equitable" is merely a consideration of whether the monetary offer made to an unleased landowner is consistent with offers extended to other landowners in the proposed unit or in the general area.

In this case, once the Division determined that Cutter had offered a 15% royalty and a spud fee to the City as part of the proposed lease of City streets, the Division's evaluation ended.

The facts in this case confirm that factors other than finances may play a significant role in lease negotiations between two parties. In particular, safety concerns may be an important consideration in such negotiations.

It should be noted that the relationship between Cutter Oil and the City is somewhat atypical. Most landowners who lease their oil & gas rights will sign one lease committing their mineral interests to a particular well. Landowners who own large or multiple pieces of property may be in a position to enter into leases for more than one well. But, here, by virtue of the fact that the City owns streets that have been included in drilling units for many different wells, the City has entered into several leases with Cutter Oil. The evidence suggests over the past five years, the City has participated in at least twelve separate Cutter wells.

Thus, there is an established "history" between Cutter Oil and the City, and it should not be surprising that the City's interests and concerns in negotiating oil & gas leases may change over time and in light of its experiences.[28] This history includes incidents that have raised safety concerns for the City officials. *(See footnote 8.)*

The evidence revealed that this area of North Royalton is heavily developed with oil & gas wells, which are densely-sited and located in close proximity to homes, schools and neighborhoods. The siting of additional wells within this community is, understandably, a concern to local government officials.

All parties to this appeal - the City government, the Division and Cutter Oil - testified that safety issues are taken very seriously. Indeed, the City government makes a valid point in its assertion that, when determining whether or not to enter into an oil & gas lease, the financial aspect of an offer to lease may not be the primary consideration. Assurances that a well will be operated in the safest manner possible, and in full compliance with all safety standards of the law, may be much more important to the City as a lessor than any potential financial compensation.

Division Chief Simmers testified that safety issues are not considered during the evaluation of a mandatory pooling application, and that safety concerns will not be considered in the Division's determination of whether the parties have been unsuccessful in negotiating a voluntary lease on a just and equitable basis.

[28] The evidence established that the relationship between City officials and Mr. Cutter has deteriorated over time. While the parties feel strongly on this subject, this fact may not be significant in determining whether negotiations between the parties were just and equitable. It is important to recognize that mandatory pooling, by its very nature, requires an unwilling landowner to become part of a business arrangement (the development of an oil & gas well) in which that landowner would prefer not to participate.

The Chief testified that safety issues are addressed through the drilling application process and by the imposition of permit conditions. *See O.R.C. §1509.06(F).* Division personnel testified to certain additional safety conditions that are placed upon wells drilled in urban settings. *(See Division's Exhibit 5, pp. 3-4.)* But, this position ignores the fact that, given the local government's responsibility for the health and safety of its citizens, the City may wish to negotiate for certain additional safeguards when leasing City-owned properties. With the exception of removing the secondary oil recovery provision from an early version of the proposed lease, Cutter Oil made no other efforts to address safety concerns raised by the City in its lease negotiations.

The City attempted to raise these safety concerns at the TAC hearing on the pooling application. Therefore, the Division was aware that safety issues were potentially an element of the lease negotiation process in this matter

However, the Division Chief, by limiting his review of the lease negotiations to only a consideration of the financial aspects of Cutter's offer to lease, failed to take into account in his decision that safety issues may have been appropriate items for negotiations towards reaching a voluntary lease on a just and equitable basis.

Of particular significance is the fact that the Callas #8HD well would be Cutter Oil's first horizontal well, and the first horizontal well drilled within the City of North Royalton. Thus, both Cutter and the City are inexperienced with regards to horizontal drilling and the operation of a horizontal well. The fact that this horizontal well will be drilled in a residential neighborhood, and into such a shallow formation, present legitimate concerns. Therefore, the safety issues surrounding the drilling and operation of this well, in this location, may be particularly appropriate items for discussion in lease negotiations.

The Commission **FINDS** that the Division's approach to evaluating whether or not an applicant has been unable to form a drilling unit under agreement on a just and equitable basis is too limited, and that a determination of whether an applicant's offers were just and equitable may require more than simply a determination of whether financial offers were adequate by industry standards or commensurate with other offers in the area.

Without dictating precisely what items the Division must consider, or the weight to be assigned to specific items during lease negotiations, the Commission **FINDS** that, in this particular matter, the scope of the Division's evaluation of whether the parties were unable to reach a voluntary agreement on a just and equitable basis, was too limited. A lease is a private agreement between parties, and the Division may not dictate the terms of a lease. However, the Division's review of the lease negotiations should have been based upon a fuller record than merely the recital of the financial terms offered for this lease. The Commission **FINDS** that the Chief acted unreasonably in limiting his consideration of whether Cutter Oil was unable to secure a voluntary lease with the City of North Royalton on a "just and equitable basis" to only the financial aspects of Cutter's offer to lease.

O.R.C. §1509.36 provides:

> If upon completion of the hearing the commission finds that the order appealed from was lawful and reasonable, it shall make a written order affirming the order appealed from; if the commission finds that the order was unreasonable or unlawful, it shall make a written order vacating the order appeal from and making the order that it finds the chief should have made.

In this case, the Commission **FINDS** that Chief's Order 2013-181 was unreasonable or unlawful, and thus will **VACATE** that order. Pursuant to the Chief's delegation of authority for the hearing required under O.R.C. §1509.27 to the TAC, the Commission hereby **ORDERS** this matter **REMANDED** to the Division for further hearing before the TAC, with its technical experience and expertise, specifically to consider the safety issues and concerns which the City has raised. After such further hearing, the Commission would expect the Chief in issuing any further order(s) regarding this application for mandatory pooling, to take into account the findings and conclusions of this Commission.

CONCLUSIONS OF LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief, if the Commission finds that the order appealed is lawful and reasonable. If the Commission finds that the order appealed is unreasonable or unlawful, the Commission shall make a written order vacating the order of Chief, and making the order that it finds the Chief should have made.

2. O.R.C. §1509.27 allows the Division Chief to order the mandatory pooling of properties where: (1) a tract of land is of insufficient size or shape to meet the spacing requirements of the law, and (2) the Chief finds that the owner of the proposed well has been unable to form a drilling unit under voluntary agreement, made on a just and equitable basis. The Chief did not fully or properly consider the issue of whether Cutter Oil was unable to form a drilling unit for the Callas #8HD Well under a voluntary agreement with the City of North Royalton on a just and equitable basis.

3. The Chief's issuance of Order 2013-181 was not reasonable, as the Chief should have conducted further inquiry into the just and equitable nature of negotiations between Cutter Oil and the City of North Royalton, and should have ordered a further hearing before the TAC for that purpose.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **VACATES** the Division's issuance of Chief's Order 2013-181, and **CONCLUDES** that the mandatory pooling application for the Callas #8HD Well, as submitted on April 5, 2013 and as applied to property owned by the City of North Royalton, should be **REMANDED to the Division for further hearing before the Technical Advisory Council on Oil & Gas.**

Date Issued: December 13, 2014

Robert S. Frost
ROBERT S. FROST, Chairman

J. Brandon Davis
J. BRANDON DAVIS, Vice Chairman

Jeffrey J. Daniels
JEFFREY J. DANIELS, Secretary

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

DISTRIBUTION:

Thomas A. Kelly, Via E-Mail [tkelly@northroyalton.org] & Certified Mail #: 91 7199 9991 7030 3939 0912l
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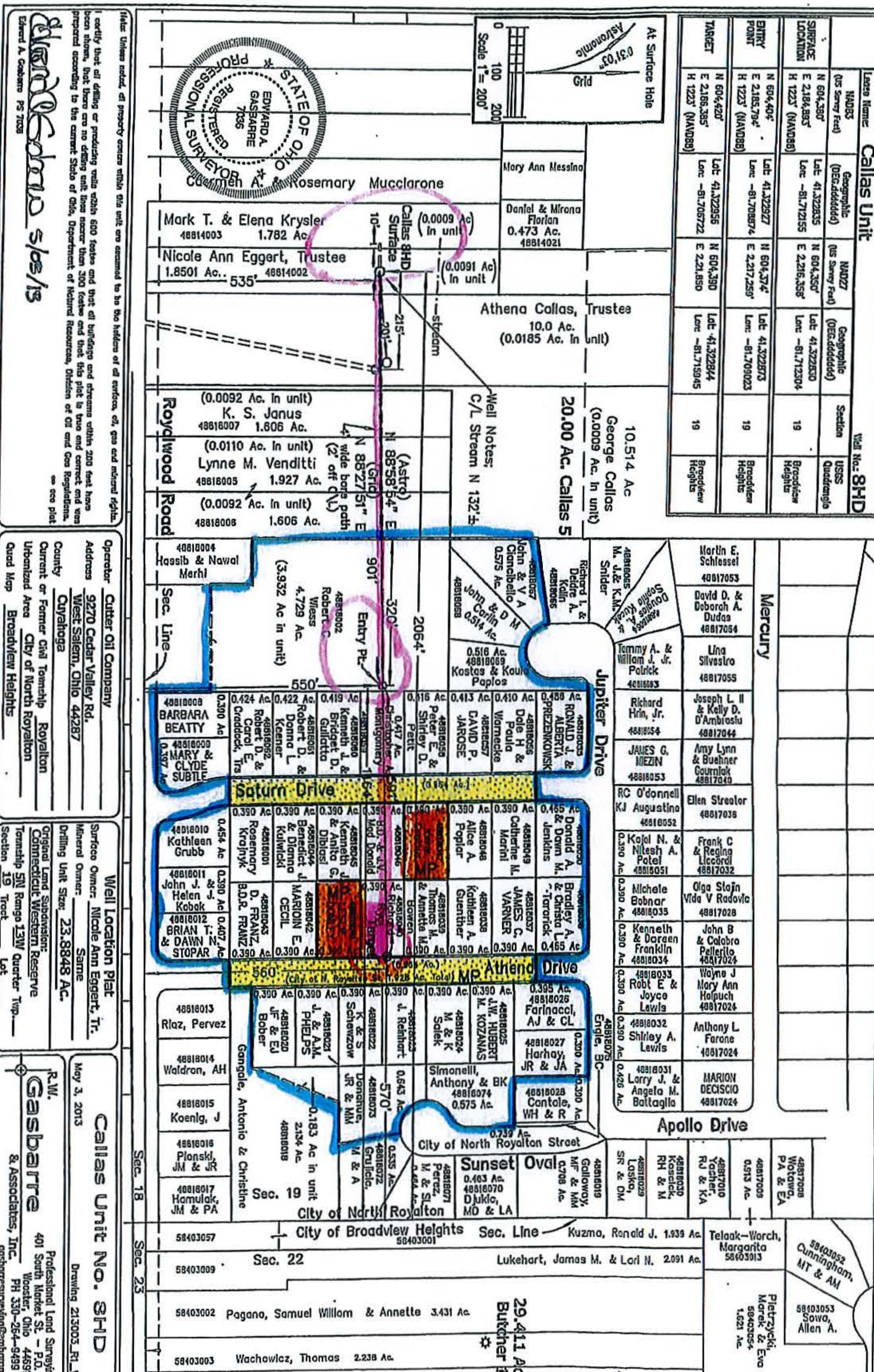
Robert Karl, Via E-Mail [bkarl@ulmer.com] & Certified Mail #: 91 7199 9991 7030 3939 0929

ATTACHMENT A

Demonstrative Exhibit
Colorized Plat of Proposed Callas #8HD Drilling Unit

Blue – Outline of Drilling Unit
Orange – Pooled Donley and Grothe Properties
Yellow – City Streets Proposed for Pooling
Pink – Location of Proposed Well


Callas Unit
Well No.: 8HD
Lease Name
SURFACE LOCATION
ENTRY POINT
TARGET
NAD83 (US Survey Feet)
Geographic (DEG.dddddd)
NAD27 (US Survey Feet)
Section
USGS Quadrangle
N 604,380' E 2,184,893' H 1223' (NAVD88)
Lat: 41.322835 Lon: -81.712155
N 604,350' E 2,216,358'
Lat: 41.322830 Lon: -81.712304
19
Broadview Heights
N 604,404' E 2,185,794' H 1223' (NAVD88)
Lat: 41.322927 Lon: -81.708874
N 604,374' E 2,217,259'
Lat: 41.322873 Lon: -81.709023
N 604,420' E 2,186,385' H 1223' (NAVD88)
Lat: 41.322956 Lon: -81.706722
N 604,390 E 2,21,850
Lat: 41.322844 Lon: -81.715945
At Surface Hole
Astronomic
0°31'03"
Grid
Scale 1" = 200'
STATE OF OHIO
EDWARD A. GASBARRE 7036
REGISTERED
PROFESSIONAL SURVEYOR
Carmen A. & Rosemary Mucciarone
Mary Ann Messina
Daniel & Mirona Florian
0.473 Ac.
48814021
Mark T. & Elena Krysler
48814003 1.782 Ac.
Nicole Ann Eggert, Trustee
1.8501 Ac. 535' 48814002
Callas 8HD Surface
(0.0009 Ac in unit)
(0.0091 Ac) In unit
Athena Callas, Trustee
10.0 Ac.
(0.0185 Ac. In unit)
10.514 Ac
George Callas
(0.0009 Ac. In unit)
20.00 Ac. Callas 5
Well Notes;
C/L Stream N 132'±
stream
(0.0092 Ac. In unit)
K. S. Janus
48818007 1.606 Ac.
(0.0110 Ac. In unit)
Lynne M. Venditti
48818005 1.927 Ac.
(0.0092 Ac. In unit)
48818006 1.606 Ac.
Roydlwood Road
(Astro) N 88°58'54" E
(Grid) N 88°27'51" E
4' wide bore path (2' off C/L)
901'
320'
2064'
550'
Entry Pt.
48818004 Hassib & Nawal Merhi
Sec. Line
48818002 Robert C Wiess 4.729 Ac. (3.932 Ac in unit)
Saturn Drive
Jupiter Drive
Mercury
Athena Drive
Apollo Drive
Sunset Oval
City of North Royalton Street
City of North Royalton
City of Broadview Heights
Sec. Line
Sec. 18
Sec. 19
Sec. 22
Sec. 23
560'
570'
Gangale, Antonio & Christine
0.183 Ac in unit
2.134 Ac.
48818018
29.411 AC.
Butcher 1
Pagano, Samuel William & Annette 3.431 Ac.
Wachowicz, Thomas 2.238 Ac.
Butcher, Fred J. 1.940 Ac.
Lukehart, James M. & Lori N. 2.091 Ac.
Kuzma, Ronald J. 1.939 Ac.
Telaak-Worch, Margarita 58403013
Pietrzycki, Marek & Eva 58403054 1.621 Ac.
58403053 Sowo, Allen A.
58403052 Cunningham, MT & AM
Note: Unless noted, all property owners within this unit are assumed to be the holders of all surface, oil, gas and mineral rights.
I certify that all drilling or producing wells within 600 feet and that all buildings and streams within 200 feet have been shown, that there are no drilling unit lines nearer than 300 feet and that this plat is true and correct and was prepared according to the current State of Ohio, Department of Natural Resources, Division of Oil and Gas Regulations.
5/03/13
Edward A. Gasbarre PS 7036
Operator Cutter Oil Company
Address 9270 Cedar Valley Rd. West Salem, Ohio 44287
County Cuyahoga
Current or Former Civil Township Royalton
Urbanized Area City of North Royalton
Quad Map Broadview Heights
Well Location Plat
Surface Owner: Nicole Ann Eggert, Tr.
Mineral Owner: Same
Drilling Unit Size: 23.8848 AC.
Original Land Subdivision: Connecticut Western Reserve
Township 5N Range 13W Quarter Twp.
Section 19 Tract Lot
Callas Unit No. 8HD
May 3, 2013
Drawing 213003_R1_Wp.dwg
R.W. Gasbarre & Associates, Inc.
Professional Land Surveying
401 South Market St. - P.O. Box 44
Wooster, Ohio 44691
PH 330-264-9499
gasbarresurveying@embarqmail.com

BEFORE THE

OIL & GAS COMMISSION

CITY OF NORTH ROYALTON, Appellant, -vs- DIVISION OF OIL & GAS RESOURCES MANAGEMENT, Appellee, and CUTTER OIL COMPANY, Intervenor.	:	Appeal No. 856 Review of Chief's Order 2013-181; Mandatory Pooling (Callas #8HD Well Cutter Oil Company) **INDEX OF EVIDENCE PRESENTED AT HEARING**

Appearances: Thomas A. Kelly, Counsel for Appellant City of North Royalton; Daniel Martin, Brian Ball, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management; Robert Karl, Counsel for Intervenor Cutter Oil Company.

Before: Robert S. Frost

In Attendance: Jeffrey J. Daniels, J. Brandon Davis

Appearances: Thomas A. Kelly, Counsel for Appellant City of North Royalton; Daniel Martin, Brian Ball, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management; Robert Karl, Counsel for Intervenor Cutter Oil Company.

WITNESS INDEX

Appellant's Witnesses:

Appellee's Witnesses:

Stephen Tompkins	Direct Examination; Cross Examination
Steve Opritza	Direct Examination; Cross Examination

Intervenor's Witnesses:

Ed Gasbarre	Direct Examination; Cross Examination
C.J. Cutter	Direct Examination; Cross Examination

EXHIBIT INDEX

Joint Exhibits:

Joint Exhibit 1	Oversized copy of Plat of the Cutter #8HD Well Unit, with mandatorily pooled properties marked by witness Ed Gasbarre (1 oversized page)

Joint Stipulated Exhibits:

Joint Stipulated Exhibit A	Transcript of portion of TAC hearing conducted on May 14, 2013 (50 pages)
Joint Stipulated Exhibit B	Transcript of portion of TAC hearing conducted on November 12, 2013 (71 pages)
Joint Stipulated Exhibit C	Letter from Division to City of North Royalton with attached Application for a Drilling Permit for the Callas #8HD Well (14 pages)
Joint Stipulated Exhibit D	OPEN
Joint Stipulated Exhibit E	City of North Royalton Resolution No. 1965-63; approved on May 5, 1965 (1 page)
Joint Stipulated Exhibit F	City of North Royalton Resolution No. 1973-201; approved on November 21, 1973 (5 pages)
Joint Stipulated Exhibit G	Map of Royalton Heights Subdivision No. 1, with notations; dated July 26, 1966 (1 oversized page)

Joint Stipulated Exhibit H	Map of Royalton Heights Subdivision No. 2, with notations; dated October 24, 1973 (1 oversized page)
Joint Stipulated Exhibit I	OPEN
Joint Stipulated Exhibit J	Agreement between City of North Royalton, Ohio and Mike Hewko, developer; dated May 24, 1965 (12 pages)

Appellant's Exhibits:

Appellant's Exhibit A	Chief's Order 2013-181; issued December 10, 2013 (10 pages)
Appellant's Exhibit B	Letter from Thomas Kelly (City of North Royalton) to TAC; dated November 11, 2013 (2 pages)
Appellant's Exhibit C	Transcript of portion of TAC hearing conducted on November 12, 2013 (71 pages)
Appellant's Exhibit D	Application of a Permit (Form 1); singed and submitted on April 5, 2013 (1 page)
Appellant's Exhibit E	City of North Royalton Brief, submitted to the TAC (44 pages)
Appellant's Exhibit F	North Royalton Ordinance No. 08-218; approved November 19, 2008 (9 pages)
Appellant's Exhibit G	North Royalton Ordinance No. 08-222; approved December 3, 2008 (8 pages)
Appellant's Exhibit H	North Royalton Ordinance No. 08-223; approved December 23, 2008 (21 pages)
Appellant's Exhibit I	North Royalton Ordinance No. 10-03; approved January 5, 2010 (7 pages)
Appellant's Exhibit J	North Royalton Ordinance No. 10-04; approved January 5, 2010 (7 pages)

Appellant's Exhibit K	North Royalton Ordinance No. 10-17; approved February 17, 2010 (12 pages)
Appellant's Exhibit L	North Royalton Ordinance No. 10-18; approved February 17, 2010 (12 pages)
Appellant's Exhibit M	North Royalton Ordinance No. 10-37; defeated March 5, 2010 (17 pages)
Appellant's Exhibit N	North Royalton Ordinance No. 10-40; approved March 17, 2010 (15 pages)
Appellant's Exhibit O	North Royalton Ordinance No. 10-41; approved March 17, 2010 (16 pages)
Appellant's Exhibit P	North Royalton Ordinance No. 10-67; approved June 2, 2010 (11 pages)
Appellant's Exhibit Q	North Royalton Ordinance No. 10-69; approved June 2, 2010 (13 pages)
Appellant's Exhibit R	North Royalton Ordinance No. 10-163; defeated December 21, 2010 (14 pages)
Appellant's Exhibit S	North Royalton Ordinance No. 11-100; approved September 20, 2011 (9 pages)
Appellant's Exhibit T	North Royalton Ordinance No. 13-54; defeated May 21, 2013 (24 pages)
Appellant's Exhibit U	WITHDRAWN
Appellant's Exhibit V	Letter from Kristin Cutter to City of North Royalton; dated April 3, 2013 (2 pages)
Appellant's Exhibit W	E-Mail Communication between Steve Opritza (Division) and Kelly Rollins (Division); dated November 13, 2013 (2 pages)

Appellee Division's Exhibits:

Appellee's Exhibit 1	Subpoena *Duces Tecum*, directed to Custodian of Records, Department of Natural Resources, Division of Oil & Gas Resources Management; and Subpoena *Duces Tecum*, directed to Steve Opritza; dated February 21, 2014 (4 pages)

Appellee's Exhibit 2	Notice of Appeal, appeal #856; and Motion to Stay or Suspend; received January 9, 2014 (11 pages)
Appellee's Exhibit 3	Chief's Order 2013-181; dated December 10, 2013 (10 pages)
Appellee's Exhibit 4	Chief's Order 2013-181; dated December 10, 2013 (9 pages)
Appellee's Exhibit 5	Well Permit, Callas # 8HD Well; issued December 10, 2013 (28 pages)
Appellee's Exhibit 6	Application for a Permit (Form 1); received April 5, 2013 (5 pages)
Appellee's Exhibit 7	Application for Mandatory Pooling; received April 5, 2013 (35 pages)
Appellee's Exhibit 8	Minutes from City of North Royalton public meeting conducted on May 14, 2013; approved June 18, 2013 (2 pages)
Appellee's Exhibit 9	Minutes from City of North Royalton Council meeting conducted on May 21, 2013; approved June 4, 2013 (3 pages)
Appellee's Exhibit 10	Letter from Patty Nicklaus (Division) to the City of North Royalton; dated April 26, 2013 (1 page)
Appellee's Exhibit 11	Minutes from City of North Royalton Utilities Committee conducted on April 16, 2013 (4 pages)
Appellee's Exhibit 12	Handwritten notes of Steve Opritza (Division); undated (2 pages)

Intervenor's Exhibits:

Intervenor's Exhibit I	E-Mail Communication between Rick Simmers (Division) and James Zehringer, Frederick Shimp (Department); dated March 14, 2012 (2 pages)

Intervenor's Exhibit II	E-Mail Communication between Heidi Hetzel-Evans (Department) and Rick Simmers (Diviion); final e-mail dated October 4, 2011 (3 pages)
Intervenor's Exhibit III	Minutes from City of North Royalton Utilities Committee meeting conducted on February 19, 2013 (1 page)
Intervenor's Exhibit IV	E-Mail Communication between Donna Vozar (City) and Bob Karl (counsel for Cutter Oil); final e-mail dated March 27, 2013 (2 pages)
Intervenor's Exhibit V	E-Mail Communication between Bob Karl (counsel for Cutter Oil) and Donna Vozar (City); final e-mail dated March 17, 2013 (6 pages)
Intervenor's Exhibit VI	Affidavits of Larry Antoskiewicz (City), dated May 7, 2013; Gary Petrusky, dated May 7, 2013; Daniel R. Langshaw, dated May 7, 2013; Paul F. Marnecheck II, dated May 7, 2013; Daniel J. Kasaris, dated May 10, 2013 (11 pages)